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Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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No. 89-1222

IN THE

Supreme Court of the United States

October Term, 1990

PERVESE AHKTAR, d/b/a CIRCLE MOBILE,

Petitioner,

v.

BIRD OIL COMPANY,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF IN REPLY TO RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Petitioner replies to the Respondent's Brief in Opposition to the Petition for Writ of Certiorari as follows:

I.

FAILING TO POST A SUPERSEDEAS BOND WAS THE SOLE REASON FOR DISMISSING THE APPEAL.

While it is true that the Order of the Fourth Circuit Court of Appeals in which Petitioner's appeal is dismissed does not specify the reason for dismissal (See Petition for Writ of Certiorari, pg. 33), it is clear from reading the Motion to Dismiss that the ground advanced in support of dismissal is the failure to file a supersedeas bond (See Brief in Opposition to Petition, App. 1-5). Respondent's entire Motion to Dismiss is founded upon the failure to file a supersedeas bond. The only cases cited in the Motion to Dismiss are cited for the proposition that failure to post bond is a ground for dismissal of an appeal (*Id.*, App. 2). (Note: These cases are no longer good law). It is worth emphasizing that this Petition for Writ of Certiorari is not from a decision of the appellate court on the merits of an appeal, but rather, is from a decision of the appellate court not to allow an appeal at all.

II.

PETITIONER HAS MADE NO SHOWING OF THE INABILITY TO POST A SUPERSEDEAS BOND.

Petitioner's ability or inability to post a supersedeas bond is irrelevant to this Petition. The Fourth Circuit Court of Appeals dismissed Petitioner's appeal because there was no supersedeas bond, without considering why there was no supersedeas bond. The whole point of this Petition for Writ of Certiorari is that this decision by the Fourth Circuit directly conflicts with decisions by the Ninth Circuit, and the District of Columbia Court of Appeals (See Petition, pg. 7).

III.

HAS PETITIONER VIOLATED THE ORDER OF THE COURT REQUIRING THE COMPLETION OF THE SALE?

The reason why Petitioner appealed the District Court's Order requiring completion of the sale in the first place was because he believed the order was erroneous. Unfortunately, he never even got to say why he thought the Order was erroneous, because his appeal was dismissed. Again, Respondent misses the point, which is that the Fourth Circuit denied Petitioner his basic right to appeal, for a reason which directly conflicts with decisions of other Circuits. Such a conflict is particularly appropriate for resolution by Writ of Certiorari.

IV.

DOES THIS CASE SIMPLY INVOLVE THE FAILURE OF PETITIONER TO COMPLY WITH A SETTLEMENT AGREEMENT, AND THEREFORE PRESENTS NO SPECIAL OR IMPORTANT REASONS FOR REVIEW BY THE SUPREME COURT?

This case does not simply involve the failure of Petitioner to comply with the terms of a settlement agreement.

This case does involve the denial by the appellate court of Petitioner's basic right to challenge by appeal an Order of the District Court which he believes erroneously interprets and modifies a settlement agreement.

This case does involve a direct conflict in decisions of the federal appellate courts as to whether lack of a supersedeas bond justifies dismissal of an appeal.

V.

PETITIONER HAS NOT COMPLIED WITH RULE 62(d) OF THE FEDERAL RULES OF CIVIL PROCEDURE.

Once again, Respondent misses the point. The whole reason for petitioning for Writ of Certiorari is that the decisions of the Circuit Courts of Appeal are in conflict as to whether the posting of the bond referred to in Rule 62(d) of the Federal Rules of Civil Procedure is a necessary prerequisite to appeal.

VI.

THE ISSUE IS NOT MOOT.

Petitioner has been deprived of his property, of the benefit of his settlement agreement, and has been ordered to pay significant sums of money (See Petition, pg. 27). The issue is far from moot.

VII.

THE BOND REQUIREMENT WAS A PART OF THE COURT'S ORDER AND MERELY A RULE OF COURT.

Quite frankly, the Petitioner does not understand this portion of Respondent's Brief. The District Court did deny Petitioner's request for a stay pending appeal because Petitioner was unable to post a supersedeas bond. That, however, has nothing to do with this Petition. The issue of whether a supersedeas bond is a proper prerequisite to obtaining a stay is entirely different from the issue of whether a supersedeas bond is a proper prerequisite to the right to appeal. It is this latter issue only with which this Petition is concerned.

Respondent accuses Petitioner of misusing the Courts and creating delays (Respondent's Brief, pg. 6). Respondent offers nothing to support this blanket allegation, because there is nothing to support it.

VIII.

PETITIONER HAS MADE NO SHOWING THAT THE APPEAL HAS ANY MERIT.

Petitioner has not had any opportunity to show that his appeal is meritorious because it was dismissed at Respondent's insistence. Respondent should not be allowed to prevent Petitioner from showing the merits of his appeal, and then complain about it.

At any rate, the issue before this Court is whether this Petition is meritorious, and it clearly is.